

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, California 94105

INITIAL STATEMENT OF REASONS

REG-2007-00025

Guidelines For Waiver of Penalty for Non-Use of Electronic
Fund Transfer or for Non-Timely Payment of Taxes

INTRODUCTION:

Pursuant to Insurance Code Sections 1775.8 and 12976.5(a), insurers and surplus line brokers ("taxpayers") whose annual taxes exceed twenty thousand dollars are required to make payment by electronic fund transfer. The Commissioner is proposing regulations that set forth this requirement and the penalties that will be assessed if the taxpayer fails to participate in the program or fails to make a timely payment.

SPECIFIC PURPOSE AND REASONABLE NECESSITY OF REGULATION:

The specific purpose of each adoption, amendment, or repeal and the rationale for the Commissioner's determination that each adoption, amendment or repeal is reasonably necessary to carry out the purpose for which it is proposed is set forth below.

SECTION 2330.1. Preamble.

Section 2330.1. Adopt

This subsection specifies that, on and after January 1, 1995, insurers or surplus line brokers ("taxpayers") whose annual taxes exceed twenty thousand dollars are required to participate in the electronic fund transfer ("EFT") program. If they fail to participate in the program or if their payment is untimely, they will be assessed a ten percent penalty plus interest on the amount due unless the penalty is waived for reasons set forth in the regulations. If the taxpayer fails to participate in the EFT program and also fails to make a timely payment, they will be assessed a twenty percent penalty plus interest on the amount due unless the penalty is waived for reasons set forth in the

regulations.

SECTION 2330.2. Definitions

Section 2330.2. Adopt

This subsection defines the terms "fedwire payment" and "Department" which, for purposes of these regulations, means the Department of Insurance.

SECTION 2330.3 Waiver of Penalty for Failure to pay Taxes by EFT

Section 2330.3. Adopt

This subsection sets forth the circumstances under which the penalty for an insurer or surplus line broker's failure to pay taxes by EFT may be waived. Circumstances include the death or serious illness of the taxpayer or a member of the taxpayer's immediate family, natural disaster, or involuntary bankruptcy.

SECTION 2330.4 Waiver of Penalty for Failure to Timely Make Payment

Section 2330.4 Adopt

This subsection sets forth the circumstances under which the penalty for failure to make a timely payment by EFT may be waived. Circumstances include the taxpayer's failure to receive a tax return because of a change of address and the Department had been properly informed of the change of address, or other situations that clearly demonstrate that failure to make timely payment is beyond the taxpayer's control.

SECTION 2330.5 Filing for Relief

Section 2330.5 Adopt

This section specifies who the insurer or surplus line broker must file under penalty of perjury with in order to be relieved of the penalty for failure to pay by EFT or failure to timely make a payment by EFT.

IDENTIFICATION OF STUDIES

There are no specific studies relied upon in the adoption of this subchapter.

ALTERNATIVES

The Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are

proposed. Performance standards were considered but were rejected as an unreasonable and impracticable alternative in the context of regulations that seek to set forth the method for timely payment of taxes via electronic fund transfer.

ECONOMIC IMPACT ON SMALL BUSINESS:

The Commissioner has identified no reasonable alternatives to the presently proposed regulations, nor have any such alternatives otherwise been identified and brought to the attention of the Department, that would lessen any impact on small business. Although performance standards were considered as an alternative, they were rejected, in part, because they would increase, rather than lessen, the impact upon small business. Unlike the proposed regulations, performance standards would not provide small businesses an efficient means of knowing how to comply, or of ensuring they have achieved compliance. Further, it could be necessary that small businesses incur the additional expense of legal fees charged by lawyers whose services might be required in order to interpret a performance standard. Finally, because of this indefiniteness, performance standards would be likely to breed costly litigation, which small businesses in particular can ill afford.

PRE-NOTICE DISCUSSIONS:

Pursuant to Government Code Section 11346.45(a), public discussions were held on June 13, 2007 regarding proposed amendments to these regulations. Interested and affected parties were given an opportunity to present statements or comments with respect to the proposed amendments. The Commissioner considered these statements and comments and some changes were made to the proposed amendments in response.